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## International Air Transport Association

Washington Office

Montreal / Geneva

August 17, 1995

Mr. Don Horn  
Assistant General Counsel  
for International Law  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Room 10105  
Washington, D.C. 20590

DST-95-232-7

Re: IATA Conference on Airline Liability. Dkt. 49152

Dear Mr. Horn:

With reference to DOT order 95-7-15 issued 12 July 1995, IATA is pleased to file with the Department a report of the Airline Liability Conference Joint Working Group's Second Meeting held in Washington, D.C., 7-8 August 1995.

The Report of this **Washington** meeting, attached together with its three Annexes, **serves** as an accurate **summary** of the discussions.

Should any additional information be required by the Department, IATA is prepared to provide it as expeditiously as possible.

Sincerely,

A handwritten signature in cursive script, reading "David M. O'Connor".

David M. O'Connor  
Regional Director, US

cc: Mr. Lorne Clark, General Counsel, IATA

36 pp

Report on Airline Liability Conference (ALC)  
Joint Working Group Meeting  
Washington, D.C., 7-8 August 1995

Following up the Joint Working Group meeting which took place in London 25-26 July, the Group reconvened in Washington 7-8 August 1995.

Background

At the London meeting, the Joint Working Group had accepted that, taking into account inflationary impact on Warsaw/Hague/Montreal Agreement limits and the demands of governments, the proposed intercarrier agreement should increase limits world-wide to no less than SDR 250,000 tentatively agreed at the Washington Conference in June. Accordingly, there was substantial discussion on how medium and small sized carriers could be persuaded to support and implement increased limits, and the most effective means of instituting unlimited liability for US ticketed passengers. The meeting had mainly focused on:

- additional cost of higher limits, especially to medium and small size airlines;
- whether unlimited liability would cost substantially more than SDR 250,000;
- how insurance costs of smaller carriers might be subsidized by the larger airlines;
- the viability of securing “pooled” insurance coverage;
- the advantages and defects of a Supplemental Compensation Plan (SCP) for the US;
- whether the Japanese Initiative could be modified so as to be more widely acceptable;
- the time frame for giving effect to a new liability regime; and
- the need to meet the concerns of the EU for coverage to SDR 500,000.

Taking into account the views of the insurance industry representatives at the London meeting, it was concluded that, despite its attractiveness to the US authorities and some carriers, the SCP solution was too unwieldy and expensive, and, without Montreal Protocol 3, a risk-prone solution. A simpler, **insurance-**based approach, possibly passenger funded, was then explored with respect to unlimited liability above SDR 250,000. But this too was put aside on the advice of insurance brokers that “splitting” the unitary coverage of most carriers’s current individual policies into two parts, the first part insured individually, and the second, (coverage above SDR 250,000) insured jointly, would likely prove more expensive for carriers.

The question of unlimited liability to cover all passengers travelling to, from and through the US was specifically reserved for further discussion. In addition, the participants agreed that the extent of carriers' willingness to waive the Warsaw/Hague defences needed to be carefully examined.

### The Washington Meeting

The 7-8 August session of the Joint Working Group was attended by 10 airlines, two Regional Associations (ATA and AITAL), and observers from the US government and the European Commission. The list of participants is attached at Annex 1, the Agenda at Annex 2, and the meeting documentation at Annex 3.

The Joint Working Group examined in depth the possibility of developing a uniform world-wide system, to be put into effect by revised conditions of carriage and applicable tariffs pursuant to a new intercarrier agreement which would *inter alia* replace the 1966 Montreal Agreement. As a result of extensive discussion, the airline participants expressed a willingness to recommend "unspecified limits" (i.e., "unlimited liability") as the most realistic, least complicated and overall most cost effective approach, provided the measure of compensation payable would be based on the law of the domicile of the passenger, and that the Warsaw Convention System defences are retained.

At the conclusion of the meeting, it was agreed to recommend the elaboration of the new solution founded on a Washington Intercarrier Agreement. The proposed package would embrace:

- ◆ one universal approach in place of the projected two-tier regime contemplated at the Washington ALC session and at the London Joint Working Group meeting (it was noted that this would eliminate the need to address the specific concerns of the US, the EU, Australia and Japan through "add on" or separate mechanisms);
- ◆ "unspecified limits" for full recoverable compensatory damages, with no **fixed** numerical limit as in Warsaw/Hague/Montreal Agreement limits; this would avoid -

setting a baseline for negotiations and a "target" for compensation;

extensive litigation directed to breaking limits under the "wilful misconduct" provision;

the need for periodic increases to limits to account for inflation;

- ◆ a precondition that compensation would be paid in accordance with the law of the domicile of the passenger;
- ◆ no waiver by carriers of their **defences** under Warsaw/Hague (it was however acknowledged that they may be waived in whole or in part, either voluntarily or as required by government);
- ◆ “up front” payments to victims or their dependents determined by individual airlines, guided by their practices, local law and custom;
- ◆ securing of widespread implementation of the Agreement by means of signatories encouraging other carriers’ accession or at least application of its provisions for successive carriage;
- ◆ the new Agreement to be effective upon receipt of requisite governmental approval or 1 November 1996 i.e., within one year of the 1995 IATA Annual General Meeting (AGM), whichever is later (this would take into account the need to provide time for the amendment of liability insurance coverage on carriers’ respective insurance renewal dates);
- ◆ termination of the 1966 Montreal Agreement (which covers only carriage to, from or through the US).

As articulated in the discussion, the key reasons for the Joint Working Group recommending the adoption of a universal “unspecified liability” approach are:

any specified limit will -

- ◇ inevitably become a target for claims;
- ◇ need to be regularly updated for inflation;
- ∇ require a “second tier” mechanism for the US (and elsewhere) creating implementation and harmonization difficulties.
- 0 continue to attract litigation to avoid its effectiveness.

unspecified liability will -

- ◇ restore the “universality” of the Warsaw limit system;
- 0 promote and facilitate **negotiated**, as opposed to court-imposed, settlements in each jurisdiction in accordance with local considerations and levels of damages;
- ◇ lead to insurance premium levels eventually reflecting actual damages paid out, rather than hypothetical concepts of risk.

The members of the Group also considered that insurance costs related to this new approach could be mitigated since:

- \* airlines already generally face the risk of current Warsaw/Hague/Montreal Agreement/limits being broken, especially in the US, and must insure against this risk;
- \* the precondition that the measure of compensatory damages will be based on the law of the domicile of the passenger should create a more predictable environment and encourage the early settlement of claims;
- \* experts in the aviation insurance markets have indicated that unspecified limits would be less costly over the long term than a series of increasing numerical limits.

The IATA Secretariat is currently elaborating the draft text of the Washington Agreement for circulation to airlines by 31 August as instructed by the Airline Liability Conference session, and subsequent submission to the IATA AGM in October 1995. The Secretariat will also use appropriate opportunities to promote widespread support for the “package” as developed, so that it can be adopted and secure the requisite governmental approvals within the envisaged time frame.

8/17/95-[1179212]

**Airline Liability Conference Joint Working Group  
Washington, DC. 7-8 August 1995**

**Attendance List**

Lorne S. Clark	IATA (Chairman)
Cameron DesBois	Air Canada
Anthony Mercer	Air New Zealand
Anne McNamara	American Airlines
Eduardo Dueri	Avianca
Ken Walder	British Airways
Caroline Boone	British Airways
Philip Bass	Cathay Pacific
Gerald Mayo	Delta Airlines
John Parkerson	Delta Airlines
Sherif Hussein	Egyptair
Adel Elshamy	Egyptair
Koiche Abe	Japan Airlines
Tomoo Abe	Japan Airlines
George Tompkins, Jr	Japan Airlines
Leslie Mooyaart	KLM
Ana De Montenegro	TACA

**Observers**

Robert Papkin	AITAL
Robert Warren	ATA
James Landry	ATA
Anna Colucci	European Commission
Peter Schwartzkopf	U.S. DoT
Jennifer Richter	U.S. Department of State

**Outside Counsel**

Bert Rein	Weiley, Rein, & Fielding
Warren Dean	Dyer, Ellis, Joseph & Mills
Pat Snyder	Dyer, Ellis, Joseph & Mills

**Secretariat**

David O'Connor	IATA Washington
Marla Weinstein	IATA Montreal

# **AGENDA**

## **ALC Joint Working Group**

*Washington DC, 7-8 August 1995*

- 1. Report on London Session**
- 2. Scenario Paper**
- 3. U.S. Carriers to Report on Discussions with DOT**
- 4. Unlimited Liability: U.S. Service; Discussion on:**
  - (i) Pooled Insurance Option
  - (ii) Supplemental Compensation Plan
  - (iii) Modified Inter-Carrier Agreement Approach
- 5. Discussion of “To, Through and From U.S.”**
- 6. Warsaw Convention System Defences:**
  - (i) SDR 250,000
  - (ii) Unlimited (for U.S.)
- 7. If Pooled Insurance being considered, Initial Period of Time for this Approach**
- 8. EU Commission position**
- 9. Follow-Up Drafting**
- 10. Report to DOT**

**ALC JOINT WORKING GROUP**

*Washington DC, 7-8 August 1995*

**Documentation**

<b>Report of IATA Airline Liability Conference Joint Working Group Meeting - London 25-26 July 1995 (without annexes)</b>	<b>WP 1</b>
<b>Scenario Paper for Washington Meeting</b>	<b>WP 2</b>
<b>Submission by Affretair</b>	<b>WP 3</b>
<b>Submission by Ethiopian Airways</b>	<b>WP 4</b>
<b>Submission by Kenya Airways</b>	<b>WP 5</b>
<b>Submission by Saudia</b>	<b>WP 6</b>
<b>Modified Inter-carrier Agreement Approach - 26 July 1995</b>	<b>WP 7</b>
<b>A Private Memorandum for IATA - Harold Caplan</b>	<b>WP 8</b>
<b>Draft Information Paper on the Expeditious Settlement of Airline Passenger Claims - Mark Franklin</b>	<b>WP 9</b>
<b>Submission by Air Algérie</b>	<b>WP 10</b>
<b>Submission by Air Madagascar</b>	<b>WP 11</b>
<b>Submission by AACO</b>	<b>WP 12</b>
<b>Submission by Virgin Atlantic Airways</b>	<b>WP 13</b>
<b>Statement by European Commission (8 August 1995)</b>	<b>WP 14</b>



## **Report of IATA Airline Liability Conference Joint Working Group Meeting London 25-26 July 1995**

In accordance with the decisions of the Airline Liability Conference Session held in Washington DC 19-23 June, two Working Groups were established on:

- a) the cost impact on airlines of the recommended enhanced liability package; and
- b) appropriate and effective means to secure complete compensation for passengers where circumstances require.

A meeting of the Working Groups was convened in London 25-26 July, attended by representatives of IO airlines, the European Union and the ATA, as well as 3 insurance brokerage houses (for part of the meeting). The list of participants is set out in **Annex 1**.

The Members of the Working Groups decided that, due to the significant inter relationship between the subject matters of the two Groups and their common interest in both Working Group mandates, the two bodies should meet jointly. It was also agreed that the Airline Liability Conference Chairman, Lorne S. Clark, General Counsel and Corporate Secretary of IATA, should chair the Joint Working Group meeting.

The meeting Agenda is at **Annex 2**, and the Working Group Documents at **Annex 3**.

The Joint Working Group reaffirmed the overriding need to preserve the Warsaw Convention System and to work to help ensure that all existing Parties to the Warsaw treaties remain within the System.

Reacting to a request to review the possibility of adopting a limit lower than the SDR 250,000 tentatively agreed at Washington, the Joint Working Group generally accepted that, taking into account inflationary impact on Warsaw/Hague/Montreal Agreement limits and the demands of governments, the proposed intercarrier agreement should increase limits world-wide to **no** less than that amount. The non-US airline representatives present reaffirmed their opposition to ensuring unlimited liability coverage for US citizens and permanent residents travelling by air on services operated solely between points outside the US.

Much of the meeting was directed to exploring how medium and small sized carriers could be persuaded to support and implement increased liability limits, and the most effective means of providing for unlimited liability for US ticketed passengers.

Discussion mainly centred on:

- a) additional cost of higher limits, especially to medium and small sized airlines
- b) whether unlimited liability would in fact cost more than an increase to SDR 250,000
- c) how insurance costs of smaller carriers might be subsidised by the larger airlines
- d) the viability of securing "pooled" insurance coverage

- e) the advantages and defects of a Supplemental Compensation Plan (SCP) for the US
- f) whether the Japanese Initiative could be modified to make it more generally acceptable
- g) the time frame for giving effect to a new liability regime, and
- h) the need to meet the concerns of the EU for coverage up to SDR 500,000.

As a result of a question and answer period with the insurance industry representatives and vigorous debate among Members of the Joint Working Group, it was noted that, despite potential support on the part of the US authorities and certain carriers for an SCP, some carriers expressed continuing reservations to the Plan approach. In their view, it was legally and administratively complicated, and potentially more expensive than other alternatives. Accordingly, participants turned to consideration of a simpler, insurance-based solution, possibly passenger funded, for unlimited liability above SDR 250,000, the elements of which could include:

- ◆ a world-wide minimum SDR 250,000 liability limit effected by conditions of carriage and applicable tariffs
- ◆ for the US (and possibly applicable elsewhere as conditions or requirements may dictate), unlimited liability through individual insurance or a “pooled” policy negotiated on behalf of carriers, with a deductible of SDR 250,000 to be covered by individual airline policies
- ◆ “pooled” coverage to be set out in individual policies taken out by each participating carrier, common rated on a per capita basis (e.g. USD 2.00-3.00 per passenger).

The question of unlimited liability to cover all passengers travelling to, from and through the US was reserved for further discussion. (It was noted that this could actually go a long way to meeting the objective of the US authorities to provide full protection in relation to tickets purchased by US nationals and permanent residents abroad.) In addition, the Joint Working Group underlined that the extent of carriers’ willingness to waive the Warsaw/Hague defences needed to be carefully examined.

Towards the end of the meeting, taking into account comments from the insurance brokers, some Working Group Members expressed reservations on -

- ⇒ the acceptability of the principle of providing unlimited liability under what would be a “no fault regime”, and
- ⇒ the possible adverse cost consequences to particular airlines of seeking “pooled” coverage for beyond SDR 250, 000 and thus “splitting” the current unitary insurance policy coverage of carriers.

The Joint Working Group agreed to reconvene in Washington 7-8 August to continue its deliberations and to try to finalise its recommendations. Meanwhile, the Secretariat undertook to make further enquiries concerning the relevant insurance issues and the US carriers are informing DOT on the details of the London meeting and the elements of what could be included in an eventual package.

## **AIRLINE LIABILITY CONFERENCE JOINT WORKING GROUP MEETING WASHINGTON DC 7-8 AUGUST 1995**

### **TAKING INTO ACCOUNT**

- possible additional cost of higher limits, especially to medium and small sized airlines
- that unlimited liability may in fact not cost more than an increase to SDR 250,000
- potential defects of a Supplemental Compensation Plan (SCP) for the US (administratively and legally complicated, and expensive)
- cost implications, especially for smaller carriers, of the Japanese Initiative
- the need to meet concerns of the EU for coverage up to SDR 500,000.
- opposition to unlimited liability for US nationals on journeys solely outside the US.

### **GENERALLY AGREED**

- ◆ overriding imperative to preserve benefits of Warsaw Convention System
- ◆ need to ensure all existing Parties to Warsaw treaties remain within the System.
- ◆ new intercarrier agreement should increase limits world-wide to SDR 250,000

### **WILLINGNESS TO CONSIDER**

- \* assistance to medium and small sized carriers to implement increased liability limits (e.g. how insurance costs of smaller carriers might be subsidised by larger airlines)
- \* viability of securing "pooled" insurance coverage beyond SDR 250,000 for a fixed initial period, coverage to be set out in individual policies of each participating carrier, common rated on a per capita basis (e.g. USD 2.00-3.00 per passenger).
- \* acceptable means of providing unlimited liability for tickets to, from and through the US
- \* waiver of Warsaw/Hague defences except contributory negligence up to SDR 250,000
- \* provision of up front payments

### **DRAFTING REQUIREMENTS**

- ⇒ form of new intercarrier agreement
- ⇒ specific language on waiver of defences and liability for US services
- ⇒ timeframe for new agreement

### **FOLLOW UP ACTION**

- 0 circulation to ALC participants and interested carriers (by 31 August 1995)
- 0 submission to IATA Strategy and Policy Committee (SPC) 01 September 1995
- ◇ review at IATA Law Council (07 September 1995)
- 0 discussion in Legal Advisory Group (September- 1995)
- 0 submission to IATA Board of Governors (29 October 1995)
- 0 approval by IATA Annual General meeting (30-31 October 1995)



# Affretair

Member of



The National Cargo Airline of Zimbabwe

P.O. Box AP13,

Harare Airport,

Zimbabwe.

Telephone: 263-4-575000/9.

Fax: 263-4-575011.

Telex: 40005 ZW/40003 ZW.

SITA: HREAPZL

FACSIMILE TRANSMISSION

DATE : 18 July 1995

TO : AFRAA	FR : AFFRETAIR
ATTENTION : ABERRA MAKONNEN	NAME : L SIGAUKE
FAX NO : 502504 NBO	REF : ENHANCED PAX LIABILITY LIMIT
CC: IATA - MR LONE S CLARK GENERAL COUNSEL - MONTREAL 514 844-6934 SEDGWICK HARARE - MR S NYAMHAMBFA FAX 727530	NO OF PAGES INCL. THIS ONE (1)

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We ack receipt of your SITA msg and appreciate the concern shown by the Conference on airline liability. However Affretair is an entirely Cargo Airline and does not carry pax.

In response to the 3 questions, our positions is as follows :

- 1) the acceptance of the SDR250 000 (US\$380 000) wud not req any additional cover in our situation.
- 2) there wud be no increase in premium as far as we are concerned.
- 3) in our situation, we sometimes carry two staff pax or two clients/agents, but not more than two at any one time. We feel that the US\$250 000 coverage for two is sufficient.

Regards

L SIGAUKE

PERSONNEL & ADMINISTRATION MANAGER

IF THIS TRANSMISSION IS NOT FULLY OR LEGIBLY  
RECEIVED, PLEASE TELEPHONE OR TELEX IMMEDIATELY,  
TELEPHONE : (010 263-4-575000/9)  
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NICHOLSON LESLIE LTD

17-07-95 12:04

ALC-WG  
WP 4

# NICHOLSON LESLIE GROUP

## Aviation

### FACSIMILE

To:	HAILU ASRAT
Company:	ETHIOPIAN AIRLINES
Fax No:	00 2511 611474
CC:	OPERATIONS DEPT - ETHIOPIAN INSURANCE CORPORATION
Fax No:	00 2511 517499
From:	PETER COX
Date:	17th July 1995
Total Pages:	9 (incl this sheet)

### RE: INCREASED PASSENGER LIABILITY LIMITS

I REFER TO THE ABOVE AND YOUR FAX 11.07., PLEASE ACCEPT MY APOLOGIES FOR THE DELAY IN REPLYING BUT I WAS AWAY FROM THE OFFICE LAST WEEK.

IN RESPONSE TO YOUR FAX, I WOULD COMMENT AS FOLLOWS:

- A) POINT 1) OF YOUR FAX - THE CURRENT PASSENGER LIABILITY COVERAGE WILL HAVE TO BE ENDORSED TO NOTE ANY CHANGE IN YOUR CURRENT SPECIAL CONTRACT LIMIT. ANY SUCH CHANGE WOULD NOT NECESSARILY THEN REQUIRE A CHANGE IN THE OVERALL LIMIT OF LIABILITY THAT YOU CURRENTLY HAVE ALTHOUGH WE WOULD MONITOR THIS.
- B) POINT 2) OF YOUR FAX - WITH REGARD TO THE COST IMPLICATIONS, WE BELIEVE THAT WHEREVER POSSIBLE IT IS BEST TO NEGOTIATE SUCH CHANGES WITH UNDERWRITERS AT RENEWAL AND NOT MID TERM DURING THE CURRENCY OF A POLICY. HOWEVER AS A GUIDE, IN SIMILAR CIRCUMSTANCES RECENTLY IN AUSTRALIA WHERE DOMESTIC CARRIERS HAD TO INCREASE THEIR PER PASSENGER LIMIT FROM

NCC/A\_123482

IF YOU DO NOT RECEIVE LEGIBLE COPIES OF ALL PAGES, PLEASE TELEPHONE OR TELEX IMMEDIATELY

NICHOLSON LESLIE AVIATION LIMITED  
PO BOX 615, BEAUFORT HOUSE, 15 ST BOTOLPH STREET, LONDON EC4A 7DD. TELEPHONE: 0171 247 4466. TELEX: 029464. FAX: 0171 377 8509.

AGENTS FOR AND A SUBSIDIARY OF NICHOLSON LESLIE LIMITED, LLOYD'S BROKER AND A MEMBER OF LLOYD'S  
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REV BY: IATA

NICHOLSON LESLIE LTD

17-07-95 12:04

- 2 -

AS \$180,000 PER PASSENGER TO A \$500,000 PER PASSENGER. THEY WERE REQUIRED TO PAY ADDITIONAL LIABILITY PREMIUMS IN THE REGION OF 10% TO 12.5%.

- C) POINT 3) OF YOUR FAX - PLEASE FIND ATTACHED:
- i) A COPY OF A LETTER TO US REGARDING THE RECENT WASHINGTON CONFERENCE ON THIS MATTER.
  - ii) A COPY OF A REPORT ON THE CONFERENCE SESSION.
  - iii) A COPY OF A RECENT PRESS ARTICLE ON THE SUBJECT.

THE CONFERENCE RAISED QUESTIONS IN PART II. OF THE REPORT ON THE CONFERENCE SESSION REGARDING "UP FRONT PAYMENTS TO MEET CLAIMANTS NEEDS" (REFER TO (c) OF PART II) AND WHILST THIS IS NOT UNREASONABLE, ANY SUCH PAYMENTS SHOULD POSSIBLY ONLY BE MADE ON THE BASIS THAT THESE MONIES ARE NOT THEN TO BE UTILISED BY THE PASSENGER OR THEIR DEPENDANTS TO FUND FUTURE LEGAL ACTION TO CONTEST THE 250,000 SDR LIMIT.

I HOPE THAT YOU WILL FIND THIS OF USE BUT IF YOU REQUIRE FURTHER INFORMATION PLEASE LET ME KNOW.

BEST REGARDS

  
PETER COX

NCC/A 1234567

2 #185500072214

251 1 011474

: 02:10 : 58-7-1981

RCV BY: IATA

2

**Kenya Airways**  
The Pride of Africa

ALC-WG  
WP 5

DA/597/I.23

25th July 1995

Mr. Lorne Clark,  
General Counsel and  
Corporate Secretary,  
International Air  
Transport Association,  
IATA Centre,  
Route De L'Aéroport 33,  
P.O. Box 672,  
CH-1215 GENEVA AIRPORT,  
SWITZERLAND.

Fax No. 41 22 799 2685

Dear Mr. Clark,

**PROPOSED ENHANCED PASSENGER LIABILITY LIMIT**

We are responding to your request in connection with the above matter. Kenya Airways has held consultations with its aviation insurance brokers and their advice is that current CSL should prove adequate in the event with the limits revised to SDRs.250,000. As regards estimated increases in premiums we expect to receive brokers' advice before the end of this week and be in a position to communicate to you before 31st July 1995.

Yours sincerely,

  
E.G. KAMAU  
COMPANY SECRETARY

c.c. Mr. Abera Makonnen,  
Director Corporate  
Industry Affairs,  
African Airlines Association,  
AFRAA Building,  
NAIROBI.

rom JEDSZSV to YULDLXB.

Rerouted using SITA

on 30JUL95 at 10.25.44

ZCZC 007 300921 JUL 95

◆QD YULDLXB CPYXXXX KWICAKU KWICIKU KWIDIKU AMMDIRJ BAHAYGF BAHGGEF  
BAHQTF BAHDLGF HDQBGEK DXBAIEK DXBBIK ADECDDY ADEQTDY ALGCZAH  
ALGCI AH AMQTRJ AMMSZRJ BEYPSME BEYQTTL CASCCAT CASIGAT DAMCDRB  
DAMQTRB KRTCZSD SAHCZIY SAHQTIY TIPDSLN TUNCPTU TUNXBTU JEDSZSV  
.JEDSZSV 300914 BATARJI JUL,95 XLA 066 300924  
ATTN. MR.LORNE S.CLARK

SUBJ: SUBMISSION BY SV ON BEHALF OF KU/GF/LN/RJ/ME/TL TO WORKING  
GROUP APPOINTED BY AIRLINE LIABILITY CONF.(ALC) AT WAS

REF TO ALC FINAL REPORT OF THE CONF SESSION 19-23 JUN 95 WHERE A/LS  
WERE INVITED TO SUBMIT THEIR VIEWS TO THE WORKING GROUP BY 31 JUL 95  
WE WUD LIKE TO OFFER OUR SUBMISSION ON BEHALF OF ABV MENTIONED A/LS  
AS UNDER:

1. WE SUPPORT IATA'S EFFORT FOR THE PRESERVATION AND MAINTENANCE OF  
THE WARSAW SYSTEM.
2. WE AGREE ON THE UPDATING OF THE LIMIT OF LIABILITY UNDER ARTICLE  
22 OF THE WARSAW CONVENTION DUE TO THE IMPACT OF INFLATION AND  
GENERAL INCREASE OF OVERALL STANDARD OF LIVING SINCE 1966.
3. MOST OF THE CARRIERS IN THIS REGION BEING SMALL/MEDIUM SIZED MAY  
NOT BE ABLE TO BEAR THE ENHANCED FINANCIAL BURDEN OF INCREASED  
LIMITS SUGGESTED BY THE ALC AS SUCH WHILE TAKING ANY FINAL  
DECISION WITH REGARD TO THE FIXING OF ENHANCED LIMITS OF  
LIABILITY IATA SHOULD NOT BE OBLIVIOUS OF THE ABV REFERRED  
SITUATION OF THE SMALL/MEDIUM SIZED CARRIERS.
4. FOR THE FOREGOING REASON WE ARE OF THE CONSIDERED OPINION THAT  
THE UPDATED LIABILITY LIMIT SHOULD NOT EXCEED SDR 100,000 ON THE  
BASIS OF STRICT LIABILITY. WE BELIEVE THAT ANY ATTEMPT TO FORCE  
HIGHER LIMIT OF LIABILITY AT THIS STAGE COULD RESULT IN SERIOUS  
FINANCIAL PROBLEMS TO THE ABOVE REFERRED CARRIERS.
5. IN PRINCIPLE WE SUPPORT SOME ELEMENT OF UPFRONT PAYMENT TO  
CLAIMANTS WITHIN THE FRAMEWORK OF A STRICT LIABILITY REGIME  
SUBJECT HOWEVER TO THE PECULIAR FINANCIAL AND OPERATING  
CONDITIONS OF THE CONCERNED CARRIERS.

WITH REF TO YT 172308/JUL95 WHEREBY WE WERE NOTIFIED OF THE MTG OF  
THE WORKING GROUP TAKING PLACE 25-26JUL AT LON WE WOULD LIKE TO  
STATE THAT WE COMMUNICATED OUR VIEWS TO AACO TO ELICIT THEIR  
SUPPORT/CONSENSUS WITH A VIEW TO COMMUNICATING THE COLLECTIVE STAND  
OF THE CARRIERS OF THIS REGION TO IATA BUT OWING TO VERY SHORT  
NOTICE REGARDING THE MTG OF THE WORKING GROUP ALL SUBMISSIONS  
COMPRISING AACO, REGIONAL CARRIERS COULD NOT BE COMMUNICATED TO U  
STP WE WOULD APPRECIATE IF U URGENTLY UPDATE US ON THE OUTCOME OF  
THE WORKING GROUPS MTG OF 25-26JUL AT LON GIVING US SUFFICIENT TIME  
TO OBJECTIVELY STUDY THEIR PROPOSALS AND  
COMMUNICATE OUR VIEWPOINTS ON THEM STP WE HOWEVER RESERVE OUR RIGHT  
TO REVIEW OUR POSITION IN THE LIGHT OF THE OUTCOME OF THE TWO  
WORKING GROUPS IF DEEMED NECESSARY STP  
BRGDS SARI ISLAM VICE PRESIDENT ARAB AND INT'L AFFAIRS (A)

◀



MODIFIED INTERCARRIER **AGREEMENT** APPROACH  
26 July 1995

ALC-WG  
WP 7

NOTE - The following draft language is submitted only to convey the substance of the concepts discussed on July 26, 1995 and is not intended to represent definitive language. George N. Tompkins and Tomoo Abe

July 26, 1995.

**DRAFT CONDITION OF CONTRACT**

In addition to those rights conferred upon passengers by the Convention, carrier agrees, in accordance with Article 22(1) of the Convention, as to all international transportation by air as defined in the Convention,

1. to a limitation on recoverable damages in Article 22(1) of the Convention of 250,000 SDRs, with respect to claims for the death, wounding or other bodily injury of a passenger within the meaning of Article 17 of the Convention;

2. not to avail itself of the defences available to the carrier under Article 20(1) of the Convention with respect to claims for damages, within the meaning of Article 17 of the Convention, up to the sum of 250,000 SDRs;

OPTION 1-3, with respect ONLY to transportation to, from or through the United States of America, which is transportation within the meaning of the Convention, not to require the passenger to prove liability of the carrier under Article 25 of the Convention in order to obtain recoverable damages under the Convention in excess of the limit of 250,000 SDRs agreed herein;

OPTION 2-3, with respect ONLY to transportation to, from or through the United States of America, which is transportation within the meaning of the Convention, not to invoke the limitation on recoverable damages of 250,000 SDRs with respect to claims within the scope of Article 17 of the Convention.

PROVIDED HOWEVER that recoverable damages shall be determined in accordance with the law of the domicile of the passenger applicable to such claims, with respect to which carrier agrees that the domicile of the passenger shall be deemed to be a place where the contract of transportation has been made within the meaning of Article 28 of the Convention.

AND PROVIDED FURTHER that the defences available to the carrier under Article 21 of the Convention are not waived and remain available to the carrier.

**A PRIVATE MEMORANDUM FOR IATA**

One man's list of points which ought not  
to be overlooked  
by  
Harold Caplan

**1. Introduction**

This brief aide-memoire merely seeks to list some important points which might be overlooked in current discussions.

Explanations are as brief as possible and can be expanded into full argument if required. The result is that a bare listing may appear arrogant and didactic. This is not intentional.

My notes are intended as a good faith contribution to those in IATA, its advisers and members who are so conscientiously striving to improve passenger compensation.

**2. The DoT Order 95-2-44, Extended by Order 95-7-15**

The original Order contains several welcome shifts of policy:

- i) no repetition of the intention to denounce the Convention if previous policy aims are not achieved
- ii) long-term goals are widened to include "*negotiation and entry into force of a new Convention meeting all US requirements*" (as an alternative to Montreal Protocols 3 + 4)
- iii) reaffirmation of US policy "*that liability Limits should be adequate to contemporary **standards** of compensation and that the current regime needs to be up-dated*"
- iv) no repetition of demand for a Supplemental Compensation Plan (merely a request to reflect the basic objectives of Montreal Protocols and SCP)
- v) discarding the *unilateral* imposition of a new regime by the US
- vi) approval of IATA's efforts to modernise "*passenger liability limits*"
- vii) authorisation of "*discussions directed toward producing a **uniform** set of passenger liability limits*"

# **A PRIVATE MEMORANDUM FOR IATA**

**Perhaps the sentiments contained in the following pages, are not yet sufficiently fashionable to procure their general favour; a long habit of not thinking a thing *wrong*, gives it a superficial appearance of being *right*, and raises at first a formidable outcry in defence of custom. But the tumult soon subsides. Time makes more converts than reason.**

*[The opening paragraph of Tom Paine's introduction to Common Sense (January 1776) - the pamphlet which inspired independence for the American Colonies]*

However, the “guide-lines” go far beyond what is reasonably attainable in the following respects:

- a) there is no system of law anywhere on the planet (not even in the US) which provides unlimited compensation on a strict liability basis for air travellers (or indeed travellers by any mode of transport). *Also it is in conjunct with the essential conditions of the Order which refer only to LIMITS*
- b) special rules discriminating in favour of US citizens and residents may, perhaps, be feasible within domestic legislation, but are an affront to the world’s airlines. [In the European Union “any discrimination on *grounds of nationality shall be prohibited*” - Article 6 of the EC Treaty]

Furthermore the search for “measures of damages consistent with those available in cases arising in US domestic air transportation” is a recipe for considerable diversity among 50 different State laws on damages plus individual variations imposed by Federal Statutes.

The Order 95-7-25 which extends anti-trust immunity until 31 Dec 1995 also contains significant adjustments of policy in recognition of IATA’s achievements at the Washington conference. For example:-

Apparently the original Order was not simply aimed at a “uniform set of passenger liability limits” but was to enable carriers “to waive the liability limits of the Warsaw Convention pending the entry into force of amendments to the Convention , . ”

IATA’s achievements in Washington are specifically acknowledged as indicating “that IATA will be able to formulate agreements that will be consistent with the [original] guidelines”

As the Washington conference specifically objected to any discrimination by nationality as announced in the guidelines, and agreed to work on two completely different methods “to secure complete compensation for passengers” it is abundantly clear that the original guidelines were hopes and aspirations and not rigid rules. Indeed the DOT’s amended preference for a *waiver* of the liability limits is a positive hint that IATA should concentrate on developing the Japanese Initiative rather than the US Supplemental Compensation plan.

### 3. “Special Contracts”

One of the most important and helpful shifts in US policy is the intention to avoid unilateral imposition of a new regime.

If this intention is maintained, this means that one of the worst features of the 1966 Montreal Agreement will not be repeated. When that Agreement was made compulsory for all carriers seeking foreign air carrier permits it was in breach of the treaty obligations of the US in accordance with the Warsaw Convention and was also inconsistent with many bilateral air service agreements.

One other error in the Montreal Agreement (and repeated in all known “Special Contracts”) remains uncorrected and should be avoided if possible. It is an innocent error introduced by an inaccurate translation into English from the sole authentic French text of the third sentence of Article 22 (1). Only the English version contains this error. The French text makes it quite clear that if the carrier seeks to increase the limit of liability above 250,000 Gold Francs, it is the PASSENGER who has the right to set the limit with the carrier’s agreement. The consequence - if the carrier unilaterally sets the higher limit *without* specific passenger agreement or choice is that, in common law jurisdictions, the Court may feel free to set aside the New Limit. Whether this would result in a reversion to the Convention gold franc limit, or simply no limit must remain uncertain (see two leading cases at the Appeal level, in which the Court refused to bind dependants to limiting ticket conditions accepted by the deceased passengers - *Nunan v Southern Railway Co* 1 K.B (1924) 223; *Jameson’s Minors v Central South African Railways* (1908) South African Law Reports 575 and also *see in re Air Crash in Bali, Indonesia* 462 F. Supp 1114).

In a modern context, it is possible that the problems inherent in the French text can be avoided if, instead of declaring that any New Limit is applied in accordance with Article 22 (1), the carriers declare that they are giving benefits IN ADDITION to those contained in the Convention e.g. “notwithstanding the limit of liability prescribed by Article 22 of the Convention, the carrier hereby agrees not to contest liability for provable compensatory damages not exceeding the equivalent of 250,000 SDR in respect of passenger death or injury”. This is also a more straightforward way of incorporating the waiver of Article 20 for which no mechanism is contained in the Convention.

As IATA members must now contemplate a variety of so-called “special contracts” and waivers of limits consistent with the Convention - it would seem wise for each carrier to make it clear in Tariffs and Conditions of Carriage that its own waiver or limit is strictly confined to passengers carried on its own services. This should minimise the problems created by Article 30 (1), or those which may arise under various commercial agreements such as code-sharing.

Finally - a problem which is particularly acute in Europe where, in many jurisdictions, benefits provided by the State or by private insurers may be taken into account when computing legal damages, and the providers of such benefits may have subrogation rights.

In these jurisdictions the first beneficiaries of any increased limit of carrier liability are often the State and/or private providers of benefits. Therefore if it is intended that heirs or dependants should have priority in benefit from higher limits of liability, at least two steps may be necessary:

- i) contract language to make this intention explicit and
- ii) changes in domestic law to minimise or eliminate disputes on priority of compensation.

#### **4. Supplemental Compensation**

Without MAP3, the scope for any domestic system of supplemental compensation is narrow.

If (contrary to the explicit terms of the original DoT Order) there is a policy requirement within the US for “unlimited” compensation for international air passengers, this could be satisfied by either of the following means:

- a) over-printing or re-designing airline tickets to make it clear they are NOT the tickets required by Article 3 of the Convention or
- b) a waiver of the Warsaw limits for death and injury

Step (a) above means that the carrier could not rely on Warsaw or special contract limits and would be consistent with the airline trend to “ticketless travel”. In addition, for contracts governed by the unamended Convention, carriers could not use the **defences** in the Convention. This might prove to be an added incentive for the US to ratify Montreal Protocol No 4 which not merely introduces a new cargo regime but would also make the US a party to the amended Convention.

Either of the above steps can be taken by voluntary action of carriers or by regulations restricted to US flag carriers.

In searching for alternative methods - there are severe limitations sketched in the barest outline below:

- i) It is axiomatic that an inter-carrier agreement cannot change the law anywhere on any topic
- ii) In particular, carriers cannot abridge the rights of passengers under the Convention to the slightest degree (Article 32)

- iii) Because the Convention allows carriers to make supplementary charges in only two circumstances (declared values for checked baggage and cargo) carriers themselves cannot impose charges on passengers to pay for liabilities imposed by the Convention. Government “approval” for such charges may simply give rise to protests by Treaty partners as being inconsistent with Treaty obligations and/or bilateral air service agreements
- iv) A supplemental charge for unlimited liability cannot be disguised as a fare increase because
  - a) the well-publicised history of this topic clearly illustrates the motives and intentions
  - b) there is no economic foundation for a fare increase on these grounds  
(It is demonstrable that for most airlines, the combined cost of aircraft and liability insurance is less than 1% of operating costs. It is noteworthy that the history of increased limits since 1966 is not accompanied by a history of consequential fare increases)
- v) Thus the scope for supplemental compensation by means of a **passenger-funded** system to supplement or supplant airline liability appears to be NIL either by carrier agreement or by legislation
- vi) This does not eliminate the possibility that there may be scope for domestic legislation requiring (or offering as an option) First-Party insurance to be purchased by passengers
- vii) However, First-Party insurance to provide “unlimited” damages is a novel concept anywhere in the world and does not fit any conventional category of authorised insurance business  
(The main novelty is that for a standardised premium, variable and unlimited sums would be paid in accordance with the damage rules of any one of the 50 states)
- viii) Thus a Federal program to provide First Party insurance for international air passengers should, as a minimum, be preceded by
  - a) amendment of the **McCarran-Ferguson** Act to permit Federal entry into the field of direct insurance supervision and/or
  - b) approval from the main NAIC members of the novel class of business and its methods of regulation

**5. Offer**

If more detail is required on any of the above propositions I shall be pleased to assist.

My earnest endeavour is to be as constructive as possible, wherever possible.

**Harold Caplan**



INFORMATION PAPER ON THE EXPEDIENTS S~~SECRET~~  
OF AIRLINE PASSENGER CLAIMS

A review of the claims handling experience of the airline industry and its insurers reveals the existence of well developed, but generally unwritten, procedures for the discharge of the responsibilities imposed by law on airlines to compensate passengers killed or injured as a result of an accident.

This paper is for information purposes only. It aims to do no more than improve airlines' general understanding of the best practice of the industry in the handling of claims. In seeking to do no more, it recognises the practical difficulties of trying to develop a single set of procedures to cover every possible eventuality.

Gathering Information

In every case claims handling begins with the identification of the names and addresses of passengers potentially entitled to compensation and, where appropriate, their legal next of kin. In practice, it is often difficult for an airline to complete this task without external assistance. This is because the details recorded in tickets/passenger lists are usually limited in nature and unverified at the time of completion/compilation. Therefore, the necessary information is usually gathered from a combination of external sources which are cross referenced with each other to ensure accuracy.

Apart from the passenger himself, typical sources are police authorities, hospital authorities (for injured passengers) and telephone calls/correspondence received by the airline through its emergency procedures information systems. In the case of fatal injury, longer delays can arise in relation to formalisation of the position of legal heirs and/or guardians of minors.

Once the necessary information has been gathered, it is usual practice for an airline to send letters to passengers or their next of kin inviting claims and giving details of the person or organisation to whom claims should be directed.

Assessing Applicable Scheme[s] of Liability

The existence of the instruments of the Warsaw Convention system (which in many countries apply in a modified form to flights which would otherwise fall outside of their application) means that whenever an air accident occurs one or more of several possible schemes of passenger liability will be applicable to the airline. The operation of those schemes is such that one single regime seldom applies universally to all passengers aboard an aircraft.

The determining factor in assessing the applicable scheme of liability for individual passengers will usually be whether the

passenger was engaged in international travel at the time of the accident. This is assessed principally by reference to the place of original departure and ultimate destination recorded in the passenger's ticket rather than just by reference to the point of departure and destination of the flight during which the accident occurred.

The nature of the Warsaw system, and the special contracts between airlines and passengers which form part of it, is such that the various schemes of potentially applicable Liability are essentially similar with the most notable exception being limits of liability, where significant differences exist.

### Evaluating Airline

By reference to the applicable scheme or schemes of liability, it is necessary to determine whether actual liability exists for an airline in relation to an accident. To some extent this can be done by reference to an internal investigation of the cause of the accident. Often, however, the airline will need to wait for details of the results of the official investigation conducted by the state in which the accident occurred. It is well known that such results frequently take a considerable period of time to become available.

In the absence of such information it can be difficult (sometimes impossible) for an airline to determine whether it is eligible to the benefit of available defences to liability or whether the limits which normally apply to restrict its maximum per passenger liability do or do not apply. Similarly, it may prevent it from evaluating the potential liability of third parties and the extent to which passengers and/or the airline may have rights of recovery against such parties.

### Interim Aid and Advance Payments

While the aforementioned procedures are being carried out - which for reasons usually beyond an airline's control, sometimes take months rather than weeks to complete - there may be persons with particular needs or anxieties caused by the accident who can be aided by the airline by means of an emergency aid payment, a guarantee of payment of some necessary expense, or some simple practical assistance. For example, taking on responsibility for medical expenses; arranging transportation of close relatives for hospital visits or funeral services; payment of lump sums for the immediate relief of distress caused by loss of financial support.

Such payments and/or assistance can be made ex-gratia or on the basis that they are capable of being brought into account on final settlement of a claim. In any event, they are, by their nature, usually non-refundable.

The diverse nature of local tradition and religious customs and the possible availability of aid from national social security authorities, combined with the fact that the circumstances of individual passengers and their close relatives inevitably vary

considerably from case to case, means that the policy of an airline and its insurers in relation to immediate aid given in advance of final settlement of claims seldom follows the same pattern,

Soon after claimants have been properly identified, their claims notified to an airline, and an evaluation made of the airline's Liability, it is often the case that a sizeable portion of most claims is capable of relatively quick assessment and agreement by the airline without much collection of supporting information. As a result, airlines are often able to further alleviate financial distress resulting from an accident (in advance of concluding a final settlement of a claim) by offering to pay a claimant the uncontested part of his claim against execution by him of a suitable document evidencing the partial settlement.

#### Assessing Quantum of Claims

If an airline decides not to contest liability it will start the claims settlement process by assessing the quantum of damages each claimant is entitled to receive by reference to the relevant rules of the jurisdiction in which the claimant has elected (from his available choices) to pursue his claim.

The claimant will need to arrange for all necessary supporting evidence to be supplied to the airline so that it may calculate the proper value of the claim. By way of illustration, documents typically required will comprise expenses receipts; pay slips for past loss of earnings and evidence of future career prospects; medical reports detailing injuries, recovery and prognosis..

Other factors may also need to be considered by an airline such as the rights of social security authorities and other third parties in respect of recovery from the airline of compensation payments already made by such parties to the claimant.

Typically the process of gathering information/documents by a claimant and their analysis by an airline is a painstaking one which can take months rather than weeks for the parties to complete. Once completed, however, the airline will be in a position to formulate and deliver a settlement offer to a claimant,

#### Final Settlement of Claims

The settlement process is normally started by an airline making an offer to a claimant. This will always be subject to the requirement that the claimant executes a suitable document evidencing the settlement (see further below).

If the value of a claim is quantified by an airline as being in excess of any applicable limit of liability imposed by the instruments of the Warsaw system (or any other applicable law) the airline may offer the claimant: no more than an amount equivalent to such limit. Likewise an airline may make an offer on the condition that, in accordance with applicable rules, an amount is

to be deducted from it and retained by the airline to take account of potential subrogation claims of third parties such as social security authorities.

If an offer of settlement is rejected by a claimant a process of negotiation often follows. If such a process is not begun, or if it fails; to produce a mutually satisfactory compromise, litigation may be instigated against an airline (alone or with other parties) by the claimant so that he may seek to secure full recovery of the amount he regards as proper compensation,

Where a claimant is unfamiliar with the Warsaw system an offer capped at an applicable limit may be received with considerable disappointment which, in turn, may result in the immediate instigation of litigation against the airline to break the limit and obtain a full recovery of proven damages. Mindful of this possibility it is the practice of many airlines to provide to claimants at as early an opportunity as possible details of the basis on which their claims will be handled.

#### Attending to Settlement Formalities

Once a settlement has been agreed in principle with a claimant, a document evidencing its terms and the release of the airline from further liability will need to be prepared by the airline and executed by the parties. In some jurisdictions local formalities (such as court approval) may need to be observed to ensure the enforceability by the parties of such document: this is almost invariably so where a settlement involves a minor.

It is regular practice for a receipt and release document to include (as released from liability) all other parties who may have a potential legal liability in relation to the cause of an accident. This is done to simplify the position of the airline in relation to pursuit of rights of contribution it may have against third parties for the cost of settlements it has concluded with claimants.

#### Summary

On the basis that most accidents share common features, a number of relatively universal guidelines for the expeditious settlement of airline passenger claims can be drawn from the best practice of the industry reviewed in this information paper.

In particular, whenever an accident happens the airline involved should give consideration to acting along the following lines.

1. Take steps to identify names and addresses of all potential claimants as quickly as practicable.
2. Once identified, send a letter to each potential claimant inviting claims and providing details of the person or organisation to whom claims should be lodged.

3. Offer aid and **assistance** to passengers and **their close relatives with** emergency needs or suffering **financial distress as result of the accident**. Such aid/assistance to be provided on a non-refundable **basis** (subject, if appropriate, to the condition that it can be brought in account on any subsequent final settlement).
4. In **cases** where loss of financial support giving **rise to** financial anxiety **exists**, calculate as soon as practicable and offer to a **affected claimants** an interim payment (against execution of a partial receipt and release document) in respect of those parts of claims which are capable of quick **assessment without much collection of supporting documentation**. Such payment should be made **where**, as a result of a preliminary assessment, it is considered unlikely that liability will be con-tested,
5. Observe and comply with **all** relevant local laws; special contracts with passengers; local customs; religious formalities. For example, in relation to payments to be made to **claimants** in advance of final settlement of their claims. [This section may need **expanding if** the AFC reaches a final. agreement in relation to up-front payments]
6. Assess airline liability position and gather information and documents **from claimants** (and other required sources) necessary to quantify claims. Additionally, give **claimants** as **early** an indication as possible of the **liability regime** which will govern the **handling of** their claims, especially i-fpossibility exists that the relevant **regime** could **result** in the capping of recovery at less than 100% of full value.
7. Where liability not in issue promptly **make** an offer to conclude a final. settlement with each claimant on completion of **claims quantification** procedures (subject to execution of a final receipt and release document).

m ALGAHAH to YULDLXB.

Rerouted using SITA

on 19JUL95 at 11.43.35

ZCZC 130 191040 JUL 95

◆QN YULDLXB CPYXXXX NBOXAXB GVAGHXB

.ALGAHAH 191037 JUL/95KE

ATTN MR LOME S. CLARK IATA

MR ABERRA MAKONNEN AFRAA

ANITA MACLOD INSURANCE COORDINATOR IATA

SUBJ : LIMITE RESPONSABLE PASSAGER

BIEN RECU TELEX NBOXAXB 061020 06JUL95 STOP EN REPOSE NOUS

SOUHAITERIONS APPORTER NOTRE MODESTE CONTRIBUTION AUX TRAVAUX DES

GROUPEES CONSTITUEES PAR LA CONFERENCE A, LAQUELLE NOUS N'AVIONS

MALHEUREUSEMENT PU PARTICIPER ET PORTONS A VOTRE CONNAISSANCE QU'A

TITRE STRICTEMENT INDICATIF ESTIMONS QUE :

1) L'AUGMENTATION DE LA LIMITE DE RESPONSABILITE A 250.000 DTS  
ENTRAINERA PROBABLEMENT UNE AUGMENTATION DE LA PRIME D'ASSURANCE  
RESPONSABILITE

2) LA PROPORTION DE CETTE AUGMENTATION VARIERAIT ENTRE 25 O/O ET 35  
O/O .

IL DEMEURE ENTENDU QUE NOTRE COMPAGNIE PARTAGE LE SOUCI EXPRIME PAR

MR LE DG DE L'IATA QUI CONSISTE A RECHERCHER UN MAXIMUM DE

PROTECTION DU PASSAGER STOP SALUTATIONS CORDIALES STOP ET FIN

S/DIRECTION AFFAIRES JURIDIQUES

LE CHEF DE DPT ASSURANCES

M. BECHERAI

◀ AIR ALGERIE

ZCZC 033 240627 JUL 95

ALC-WG  
WP 11

◆QU YULDLXB CPYXXXX NBOXAXB TNRDDMD

.TNRADMD 240532

SUBJECT : AIRLINE LIABILITY

ATTN : LORNE S.CLARK

GENERAL COUNSEL AND CORPORATE SECRETARY IATA

FROM : RANDRIANAMBININTSOA ARTHUR

AIR MADAGASCAR - DIRECTOR LEGAL AFFAIRS

ET PRESIDENT COMITE JURIDIQUE DE L'AFRAA

FAISONS SUITE A V/TLX 21 JULY ANNONCANT REUNION AVANCEE GROUPES DE TRAVAIL A LONDRES 25/26 JULY ET AIMERIONS CONNAITRE SI MEMBRES DESIGNES PAR SOUS REGION AFRIQUE ONT ETE AVISES A TEMPS ET ONT CONFIRME LEUR PARTICIPATION STP VOUS ADRESSONS NOS COMMENTAIRES RELATIFS AUX DEUX SUJETS TRAITES : A/ MESURES PREFERENTIELLES POUR PETITES COMPAGNIES - B/ SCP

NOUS APPRENNONS QUE LE MARCHE DES ASSURANCES ANNONCE DEJA UNE HAUSSE DES PRIMES RESULTANT DU RELEVEMENT A 250.000 DTS LA LIMITE DE RESPONSABILITE. CE QUI CONFIRME L'INQUIETUDE EXTREME QUE NOUS AVONS FORMULEE LORS DE LA CONFERENCE DE WASHINGTON.

IL SEMBLE EGALEMENT QUE LA HAUSSE DE LA PRIME CORRESPONDANTE DEPENDRA DE LA CAPACITE A NEGOCIER DE CHAQUE COMPAGNIE AERIENNE. CETTE PRATIQUE PENALISERA UNE FOIS DE PLUS LES PETITES COMPAGNIES - NOTAMMENT LES COMPAGNIES AFRICAINES DONT LES LIMITES APPLIQUEES SONT AU DEPART MOINS ELEVEES QUE CELLES PRATIQUEES DEJA PAR COMPAGNIES EUROPEENNES ET AMERICAINES.

NOUS DEMANDONS AUX WORKING GROUPS DE TROWER LES PARADES POUR ATTENUER DANS L'ESPRIT DES ASSUREURS, LES EFFETS DU RELEVEMENT DE LA LIMITE EN DEMONTRANT

A- QUE DANS LA FIXATION ACTUELLE DES PRIMES - LES ASSUREURS ONT DEJA REPERCUTE LE MONTANT DES INDEMNISATIONS EFFECTIVEMENT PAYEES EN EUROPE OU AUX USA - LESQUELLES AYANT TOUJOURS ETE SUPERIEURES A LA LIMITE THEORIQUE DE USD 75.000 CF : PRATIQUE DES CAISSES DE SECURITE SOCIAL EN EUROPE.

B- ET QUE EN CONSEQUENCE IL NE DEVRAIT PLUS ETRE APPLIQUEE UNE AUGMENTATION NOUVELLE DES PRIMES DU SIMPLE FAIT DE L'ACTUALISATION DE LA LIMITE AGREE.

NOUS DEMANDERONS AUX W.G DE REPRENDRE ET APPROFONDIR LE MECANISME QUI CONSISTERA A NEGOCIER - AU NIVEAU IATA ET SUR LE MARCHE GLOBAL DES ASSURANCES - UN PACKAGE FORME PAR L'ENSEMBLE DES VALEURS A ASSURER DE L'ENSEMBLE DES COMPAGNIES AERIENNES. ENSUITE, LES MESURES PREFERENTIELLES QUI SERONT APPLIQUEES AUX PETITES COMPAGNIES SERONT ALORS FIXEES PAR LE W.G ET TRAITES A L'INTERIEUR DES TAUX DE PRIME AINSI OBTENUS SUR LE MARCHE DES ASSURANCES - LESQUELS SERONT SUPPOSES FAVORABLES CAR RESULTANT DE CES NEGOCIATIONS PAR PACKAGE MENEES PAR IATA DONT LES POUVOIRS EN CE SENS SERONT RENFORCES.

LES DIFFICULTES VIENDRONT DU FAIT QUE LES ELEMENTS DE BASE DES AIRLINES SONT DIFFERENTS : I.E. CLIENTELE - RESEAU - STP RESEAU DOMESTIQUE USA PAS DE LIMITATIONS.

STRICT LIABILITY - LES DISPOSITIONS DE L'ARTICLE 20 CONVENTION VARSOVIE DOIVENT ETRE MAINTENUES POUR LES CAS DE DOMMAGES CAUSES PAR DES TIERS ET PERMETTRE AUX COMPAGNIES PROWER LA NON RESPONSABILITE.

NRADMD to YULDLXB.

Rerouted using SITA

on 24JUL95 at 07.31.23

L'APPLICATION DU SCP POURRAIT ETRE DISCUTABLE CAR CONCERNE BILLETS  
ACHETES AUX USA . . . DONC FORCEMENT DISCRIMINATOIRE.

NOUS DEMANDERONS QUE SOIENT ETUDIES ET MAITRISES PAR IATA LES  
CRITERES FUTURS DE REVALORISATION DE LA LIMITE DE RESPONSABILITE DE  
MANIERE A EVITER TOUT PHENOMENE D'ACCELERATIONS DES RELEVEMENTS DES  
LIMITES DONNANT PRETEXTE AUX ASSUREURS DE REHAUSSER TOUS LES ANS LE  
MONTANT DES PRIMES.

MERCI DE NOUS TENIR AVISES EN MEME TEMPS QUE AFRAA SITA CODE NBOXAXB  
- SLTS

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JEDINSV to YULDLXB.

Rerouted using SITA

on 06AUG95 at 13.55.18

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.JEDINSV 061237 /MA AUG,95 XLA 297 061255  
PLS RELAY FOLLOWING MESSAGE TO THE  
ATTN OF MR. LORNE CLARKE  
RE : ALC JOINT WORKING GROUP MTG AT WAS 7 - 8 AUG 1995  
-----

REF AACO TLX BEYXAXB 030714 OF 3 AUG 1995 YOU NOMINATING ME AS  
AACO REPRESENTATIVE DUE TO LATE ADVICE OF MEETING AND  
UNAVAILABILITY OF IMMEDIATE FLIGHTS OUT OF SAUDI ARABIA I AM  
UNABLE TO ATTEND THE MEETING STP HOWEVER WOULD LIKE TO EXPRESS  
VIEWS OF AACO AND SUPPORT THE VIEWS OF AIR MALTA CMA AVIANCA AND  
EGYPT AIR AND REAFFIRMING THE SAUDIA TELEX JEDSZSV NBR 300915 DTD  
30TH JULY'95 COMMUNICATING FOLLOWING VIEWS:

1. LIABILITY LIMITS SHOULD BE UPDATED TAKING INTO ACCOUNT  
INTERESTS OF CARRIERS CMA SOCIO ECONOMIC STANDARDS AND BE  
WITHOUT DISCRIMINATION TO PAX STP
2. WE SUPPORT WAIVER OF DEFENCE UNDER ART 20.1 OF THE WARSAW  
REGIME FOR AMOUNTS UP TO SDR 100,000 CMA BUT CONTINUE TO  
RETAIN DEFENCE FOR LIABILITY UPTO SDR 25,000 OVER AND ABOVE  
SDR 100,000 STP
3. THE AACO WILL CONSIDER ANY SUGGESTION FOR PAYMENT OF FULL  
COMPENSATION TO PASSENGERS IN ACCORDANCE WITH THE LAW OF  
DOMICILE OF THE PASSENGER STP
4. AACO MEMBERS ARE PREPARED TO DISCUSS THE VIABILITY OF  
PURCHASING ADDITIONAL INSURANCE COVERAGE TO COVER LIABILITY  
IN EXCESS OF SDR 100,000/- IN THE BACKGROUND OF THEIR  
PECULIAR OPERATING CONDITIONS STP

AACO STRONGLY FEELS THAT ANY DECISION BY IATA IN FLAGRANT  
DISREGARD OF THE VIEWS AND THE DIFFICULTIES OF THE SMALL AND  
MEDIUM SIZED CARRIERS WOULD ONLY LEAD TO DISHARMONY AMONGST  
CARRIERS AND BREAKDOWN THEIR FAITH @ CONFIDENCE IN THE FAIRNESS  
@ IMPARTIALITY OF IATA STP  
BEST REGARDS. FOUAD S. SOUR1

◀



Ashdown House  
High Street  
Crawley  
West Sussex  
RH10 1DD  
tel: 01293 502345  
fax: 01293 747195

Our Ref: LMG/1121

1 August 1995

Lorne S Clarke, Esq  
General Counsel and Corporate Secretary  
International Air Transport Association  
IATA Centre  
Route de L'Aéroport 33, PO Box 672  
CR-1215 Geneva 15 Airport  
Switzerland

RECEIVED BY  
IATA LEGAL DEPARTMENT  
04 AUG 1995

#### PASSENGER LIABILITY LIMITS

Further to the IATA Members meeting in Washington last month I understand that a further meeting is taking place with the Insurance Broking Community here in London. Notes taken from this meeting conclude with a request that "we would urge you to request IATA not to press member airlines to assess the likely impact of hypothetical or theoretical limits on member airline insurance costs."

I am writing to do just that. I am aware that, last year, Peter Martin of Frere Cholmondley carried out certain "research" in the insurance market and guestimated as a result of this that liability prerniums would increase by approximately 8% but. the basis of this conclusion is open to question.

Virgins view has been for some time that either existing limits are retained or limits are scrapped altogether. The former has the advantage of satisfying the smaller airline6 from third world countries where levels of damages are not and, in many case6 for their own national6 need not be greatly or significantly increased. At the same time however the very paucity of the limits gives scope for their breach in the First World. As far a6 we are concerned the only viable alternative is the principle of "unlimited liability" globally. Any midway compromise must, of necessity, be temporary and possibly even discriminatory,

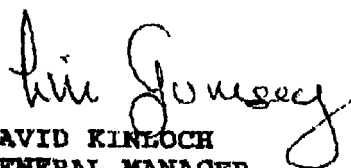
Naturally **one** of the difficulties will be **insurance** costs. It **is**, in the highly competitive environment of the airline industry, impossible to suggest **that** one group of airlines should **subsidise** the insurance **costs** of another. At the same time however the at times punitive rating structures applied by the International. insurance market to smaller airlines would make **any** **meaningful** increase in liability limits **economically unviable** for them, Unfortunately I do not **have a ready answer** to this dilemma but I would maintain that the "middle **course**" of higher limits without going "**unlimited**" would not provide an acceptable long term solution,

**This** letter **is** not intended to provide a **solution** but merely to add to the **debate** and to restate my company's views on the issue.

More importantly, however, it is **intended** to re-enforce **the** general view in the insurance market that continued dialogue without action will only drive up prices for those who can least afford it.

Kind regards,

Yours sincerely,



pp DAVID KINLOCH  
GENERAL MANAGER

EC Commission  
Airline Liability Conference Working Groups  
Washington, 7 - 8 August 1995

The EC Commission has closely followed the discussions held in the framework of the IATA Airline Liability **Conference**. The Commission has warmly welcomed this initiative. Not only because it represents the first attempt at a global level to increase the limits for compensation paid to victims of air accidents, since ICAO convened the Montreal Conference in 1975. But also because this initiative is taken at airline level on a voluntary basis.

Today, within the working groups framework, two issues **will** have to be dealt with:

- the insurance costs assessment,
- the third tier options.

As far as the former is concerned, during the last meeting in London, the idea has been put forward that carriers could form a pool in order to negotiate jointly a common-rated group policy for liability in excess of 250,000 SDR. Despite some technical difficulties and the uncertainties about the participation of some big carriers, this solution has a lot going for it and the Commission would probably grant a group exemption under art.8553 of the Treaty of Rome, considering the advantages it will have for consumers.

It should be stressed again, at this stage, that **upholding** the interests of consumers is one of the central preoccupations of the Commission and that is why the Commission **will** not be party to a solution which does not give **sufficient** weight to the concerns of consumers. An inter-carrier agreement will have to be granted approval under the EC competition rules. Such approval requires that passengers **will** benefit from the agreement. An agreement can, therefore, not represent less than what the passenger can expect today. In recent accidents **the** limit has been waived and compensations have been paid up to 500,000 SDR with some scrutiny. Claims up to 250,000 SDR have, basically been **accepted**. **That** is why the Commission considers that an agreement that does not include at least 250.000 SDR on a strict liability basis **plus something more** could likely not be approved.

This brings us to the second issue: the third tier options. So far only the US SCP has been discussed. In this respect the Commission would like to stress once again that unbreakable limits as a principle is next to impossible to accept. Besides, the risk that a passenger would still use art.25 against the carrier cannot be excluded. I would like to remind the participants to the working groups that the Commission would consider a liability limit which provides for 500,000 SDR as a more appropriate figure within the EU. In other words, 250,000 SDR would not be considered as enough. As it was highlighted during the last meeting of the working group, a solution close to the Japanese initiative could be easier to implement. In this context it cannot be excluded that a trade-off could be envisaged so that the first tier with strict liability would not go to 250,000 SDR but to a lower amount although higher than 100,000 SDR. The second tier would then be of unlimited liability above that figure **while** keeping the defense of **art.20**.

The Commission hopes **that** this meeting will be successful and pave the way for your Annual General Meeting in October.